

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
D.A.B. GROUP LLC,	:	Case No. 14-12057 (SCC)
	:	
Debtor.	:	
	:	

REPLY DECLARATION OF BRETT DOCKWELL

BRETT DOCKWELL declares the following to be true under penalties of perjury:

1. I am a member of Morrison Cohen LLP, counsel to Orchard Hotel, LLC ("Orchard"). I submit this declaration in support of Orchard's Motion for Limited Relief from the Automatic Stay, February 10, 2015 [Dkt. No. 100]. I am fully familiar with the facts set forth herein based on my personal knowledge and my review of the relevant loan files of Brooklyn Federal Savings Bank ("BFSB"), which are in Orchard's possession.

2. **Exhibit 1** is a true and correct copy of the Civil File Summary for the case entitled *Orchard Hotel, LLC v. D.A.B. Group LLC, et al.*, No. 850044/11, which I printed from the website of the New York State Supreme Court, First Department (the "First Department"), on March 17, 2015. I placed a red oval on the third page, indicating that Orchard's appeal of Justice Ramos' March 21, 2014 order was noticed for the First Department's September 2014 Term.

3. **Exhibit 2** is a true and correct copy of a Stipulation filed in the First Department on July 11, 2014, seeking a one-week extension of the return date of Orchard's petition, from July 14, 2014 to July 21, 2014.

4. Instead of re-calendaring return date of the petition for July 21, 2014, the Appellate Division Clerk's Office calendared the return date for September 3, 2014.

5. The parties were not informed why the return date was calendared as September 3, 2014, and I did not have the opportunity to discuss the matter with the Clerk's Office because the next business day, July 14, 2011, the Debtor filed its chapter 11 petition, halting further proceedings in the Appellate Division.

6. **Exhibit 3** is a true and correct copy of a Notice of Bankruptcy Filing, filed by the Debtor in the First Department on July 15, 2014.

7. As a result of the Debtor's bankruptcy filing, briefing on Orchard's petition was never completed.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on April 29, 2015 in New York, New York.

s/ Brett Dockwell
Brett Dockwell

EXHIBIT 1

New York State Unified Court System

Appellate Division First Department

Civil File Summary

INDEX	CALENDAR	TITLE
850044/11	2013 101	ORCHARD HOTEL V D.A.B. GROUP

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#
APR 2013	MAY 2013	05/07/2013	Argued	10202

ORDER	JUDGMENT	NOA
03/30/2012		04/25/2012
03/30/2012		

APPELLANT	BRIEF	REPLY BRIEF	OTHER
D.A.B. GROUP	01/22/2013	03/07/2013	

RESPONDENT	BRIEF	REPLY BRIEF	OTHER
BROOKLYN FEDERAL	02/26/2013		
ORCHARD HOTEL	02/27/2013		

ATTORNEY (LAST, FIRST, MI)	FIRM	FOR
NIMETZ, EVERETT N.		APPELLANT
SCHARF, Y. DAVID	FAVATA & WALLACE	APPELLANT
MORRISON COHEN		RESPONDENT
MARSH, JAMES G.	O'REILLY MARSH & CORTESELLI	RESPONDENT

DISPOSITION	ENTERED
AFFIRMED AFTER ARGUMENT/SUBMISSION	05/28/2013
AFFIRMED AFTER ARGUMENT/SUBMISSION	05/28/2013

INDEX	CALENDAR	TITLE
850044/11	2013 1511	ORCHARD HOTEL V D.A.B. GROUP

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#
OCT 2013	NOV 2013			

ORDER	JUDGMENT	NOA
07/30/2013		08/02/2013

APPELLANT	BRIEF	REPLY BRIEF	OTHER
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ORCHARD HOTEL 08/05/2013

RESPONDENT	BRIEF	REPLY BRIEF	OTHER
ATTORNEY (LAST, FIRST, MI)		FIRM	FOR
SCHARF, Y. DAVID	MORRISON COHEN, LLP		APPELLANT
NIMETZ, EVERETT N.	FAVATA & WALLACE		RESPONDENT
DISPOSITION			ENTERED
WITHDRAWN BEFORE ARGUMENT/SUBMISSION			12/19/2013

INDEX	CALENDAR	TITLE
850044/11	2013 1714	ORCHARD HOTEL V D.A.B. GROUP

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#
NOV 2013	DEC 2013	12/04/2013	Argued	11439

ORDER	JUDGMENT	NOA
08/28/2013		08/28/2013
		08/28/2013

APPELLANT	BRIEF	REPLY BRIEF	OTHER
ORCHARD HOTEL	09/03/2013	11/15/2013	
BROOKLYN FEDERAL SAVINGS	09/03/2013	11/07/2013	

RESPONDENT	BRIEF	REPLY BRIEF	OTHER
D.A.B. GROUP	10/30/2013		

ATTORNEY (LAST, FIRST, MI)	FIRM	FOR
SCHARF, Y. DAVID	MORRISON COHEN, LLP	APPELLANT
MARSH, JAMES G.	O'REILLY MARSH & CORTESELLI	RESPONDENT
NIMETZ, EVERETT N.	FAVATA & WALLACE	RESPONDENT

DISPOSITION	ENTERED
REVERSED AFTER ARGUMENT/SUBMISSION	02/18/2014

INDEX	CALENDAR	TITLE
850044/11		ORCHARD V RAMOS

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#
				13014

DISPOSITION
DISMISSED AFTER ARGUMENT/SUBMISSION

ENTERED
09/23/2014

INDEX	CALENDAR	TITLE
850044/11	2014 1371	ORCHARD HOTEL V D.A.B. GROUP

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#
SEP 2014				

INDEX	CALENDAR	TITLE
850044/11		ORCHARD HOTEL V D.A. B. GROUP, LLC

NOTICED FOR TERM	ADJOURNED TO TERM	DATE OF ARGUE	ARGUED	APPEAL#

[Back](#)

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
Application of

ORCHARD HOTEL, LLC,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

--against--

HON. CHARLES E. RAMOS, Justice of the
Supreme Court,

--and--

D.A.B. GROUP LLC; ORCHARD
CONSTRUCTION, LLC; FLINTLOCK
CONSTRUCTION SERVICES LLC; JJ K
MECHANICAL INC.; EDWARD MILLS &
ASSOCIATES, ARCHITECTS PC; CASINO
DEVELOPMENT GROUP, INC.; CITYWIDE
CONSTRUCTION WORKS INC.; EMPIRE
TRANSIT MIX INC.; MARJAM SUPPLY CO.,
INC.; ROTAVELE ELEVATOR INC.; SMK
ASSOCIATES INC.; FJF ELECTRICAL CO.
INC.; CITY OF NEW YORK; NEW YORK
STATE DEPARTMENT OF TAXATION &
FINANCE; LEONARD B. JOHNSON; CITY OF
NEW YORK ENVIRONMENTAL CONTROL
BOARD; BROOKLYN FEDERAL SAVINGS
BANK; and STATE BANK OF TEXAS,

Respondents.
-----X

Index No. 850044/2011
Hon. Charles E. Ramos

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and among the
undersigned counsel to the respective parties to the within action that the return date

for Petitioner's Verified Petition for Writs of Prohibition and Mandamus, Summary Judgment & Emergency Relief (the "Petition") shall be extended by one week, from July 14, 2014 at 10:00 a.m., to July 21, 2014 at 10:00 a.m.; and

IT IS FURTHER STIPULATED AND AGREED that the time for Respondents to oppose or otherwise respond to the Petition shall be extended so that any opposing or responsive papers are actually received by Petitioner's counsel by or before July 16, 2014 at 5:00 p.m.; and

IT IS FURTHER STIPULATED AND AGREED that the time for Petitioner to reply to Respondents' opposing or responsive papers, if any, shall be extended to July 21, 2014 at 10:00 a.m.; and

IT IS FURTHER STIPULATED AND AGREED that for purposes of this special proceeding, service upon the undersigned counsel by e-mail shall be deemed good and sufficient service; and

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed in counterparts and by facsimile or electronically reproduced signature, which taken together shall be accepted by the parties and submitted to the Court as one original document.

Dated: July 10, 2014

MORRISON COHEN LLP

By: Brett Dockwell
Brett Dockwell
909 Third Avenue
New York, NY 10022
(212) 735-8600

*Attorneys for Petitioner
Orchard Hotel, LLC*

OFFICE OF COURT
ADMINISTRATION

By: Pedro Morales
Pedro Morales
25 Beaver Street, 11th Fl.
New York, NY 10004
(212) 428-2150

*Attorneys for Respondent
Hon. Charles E. Ramos, J.S.C.*

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Flinlock Construction Services LLC*

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*Attorneys for Respondent
D.A.B. Group, LLC*

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CARROLL & BERTOLOTTI LLP

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*Attorneys for Respondents
Edward Mills & Assocs., Architects,
PC*

Dated: July 10, 2014

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(212) 735-8600

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Orchard Hotel, LLC*

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Edward Mills & Assocs., Architects,
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Dated: July 10, 2014

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Orchard Hotel, LLC*

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Edward Mills & Assocs., Architects,
PC*

EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
ORCHARD HOTEL LLC,

Index No. 850044/2011

Petitioner,

-against-

D.A.B. GROUP, LLC, et al.

Respondents.
-----X

FILED

JUL 15 2014

SUP COURT, APP. DIV
FIRST DEPT.

NOTICE OF BANKRUPTCY FILING

PLEASE TAKE NOTICE that on July 14, 2014, D.A.B. Group, LLC (the "Debtor") filed a voluntary petition in the United States Bankruptcy Court for the Southern District of New York for relief under chapter 11 of the Bankruptcy Code. A copy of the notice of bankruptcy case filing is attached hereto as Exhibit "A".

PLEASE TAKE FURTHER NOTICE that pursuant to section 362(a) of the Bankruptcy Code, the Debtor's filing of its voluntary petition operates as a stay, applicable to all entities, of, among other things: (a) the commencement or continuation of all judicial, administrative, or other actions or proceedings against the Debtor (i) that were or could have been commenced before the commencement of the Debtor's case or (ii) to recover any claims against the Debtor that arose before the commencement of the Debtor's case; (b) the enforcement, against the Debtor or against any property of the Debtor's bankruptcy estates, of a judgment obtained before the commencement of the Debtor's cases; or (c) any act to obtain

possession of property of or from the Debtor's bankruptcy estate, or to exercise control over property of the Debtor's bankruptcy estate.

Dated: New York, New York
July 15, 2014

GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP
Attorneys for the Defendant
1501 Broadway, 22nd Floor
New York, New York 10036

By: 
J. Ted Donovan, Esq.

TO: Morrison Cohen LLP
Attorneys for Plaintiff
909 Third Avenue
New York NY 10022

Simon J.K. Miller, Receiver
Blank Rome LLP
405 Lexington Avenue
New York, NY 10174

United States Bankruptcy Court
Southern District of New York

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 07/14/2014 at 11:50 AM and filed on 07/14/2014.

D.A.B. Group LLC
85 West Hawthorne Avenue
Valley Stream, NY 11580-6107
Tax ID / EIN: 52-2133954



The case was filed by the debtor's attorney:

J. Ted Donovan
Goldberg Weprin Finkel Goldstein LLP
1501 Broadway
22nd Floor
New York, NY 10036
(212)-221-5700

The case was assigned case number 14-12057-scc to Judge Shelley C. Chapman.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.nysb.uscourts.gov> or at the Clerk's Office, One Bowling Green, New York, NY 10004-1408.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Vito Genna
Clerk, U.S. Bankruptcy
Court